

WRITTEN TESTIMONY OF JAMES NECAISE
HOUSE COMMITTEE ON GOVERNMENT REFORM

MAY 4, 2006, 10:00 am

Ladies and Gentleman – I'd like to thank you for inviting Necaise Brothers Construction Company, Inc. to these hearings, and allowing us this historic opportunity to testify. My name is David Machado, Staff Engineer for Necaise Brothers Construction Company, Inc., and I will be presenting our company's testimony. Seated next to me is James A. Necaise- Vice President of Necaise Brothers Construction Company, Inc. I would first like to state that not only am I speaking out for Necaise Brothers, but also for all other local Mississippi contractors that have been slighted by the government's current practice of hiring out of state contractor's to perform work that is critical to the rebuilding of not only the physical but the emotional infrastructure of our community. We have all felt the injustice. From truck drivers to chainsaw operators, we have had to scrape and claw to be afforded an opportunity to rebuild the very place we call home. In these next five minutes I hope I can convey to you the frustration we have experienced as a result of the Hurricane Katrina disaster services procurement process.

I. Company Overview and Participation in Disaster Relief Projects

Necaise Brothers Construction Company, Inc. is a Mississippi corporation, based out of Gulfport, MS. We employ 36 local citizens and work with local subcontractors who employ hundreds of local residents. Our company has been engaged in demolition, debris removal, site management, and debris reduction since the inception of Necaise Brothers in 1981.

Necaise Brothers history of disaster relief services precedes the formation of the company. James' father, Herman R. Necaise, President of Necaise Brothers Construction Company, Inc., began his roots in the field of debris removal back in 1969 with Hurricane Camille. A resident of Hancock Co., MS, Herman used his own dump truck to haul debris from the devastated Bay St. Louis, MS area. In 1981, Herman established Necaise Brothers-mainly concentrating on heavy construction; however debris removal and reduction remain a vital part of the Necaise Brothers services.

II. Hurricane Katrina and Necaise Brothers' Disaster Services

On August 29th, 2005 a hurricane named Katrina challenged Necaise Brothers like no other had in the past. My family, Herman and James- as well as many of our employees- all lost their homes to the ravages of Katrina. Despite the hardening blow- Necaise Brothers retained every single employee it had prior to the storm- every single one immediately came back to work. We are proud to say that despite our personal losses- our company was a first responder for numerous municipalities and local governments across the Mississippi Coast in the immediate hours following Katrina. Necaise Brothers crews cleared vital roads of debris for emergency personnel and equipment to aid those in need.

Once emergency operations were successfully completed, Necaise Brothers concentrated its efforts on debris removal, reduction and demolition for our local governments. The City of Long Beach, MS engaged Necaise Brothers to remove all debris from the public right of ways, as well as demolish and remove debris for over 600 ROE's (right of entry) city wide and maintain sites for debris disposal. Necaise Brothers is proud to say that the City of Long Beach's recovery effort is one of the elite on the

Mississippi Gulf Coast. Approximately 1,200,000 cubic yards of debris have been removed and disposed of from the City of Long Beach.

Additionally, Necaise Brothers was awarded the contract to screen the sand beach in Harrison County, MS of all small debris lodged in the sand. In the end, over 730 Acres of sand beach has been successfully screened of debris left by Hurricane Katrina.

III. Hurricane Katrina and the Army Corps of Engineers

On April 7, 2006, Necaise Brothers was awarded a contract (“Contract”) under Solicitation No. W912EE-06-R-0005 by the United States Corps of Engineers (“Corps”), Vicksburg Consolidated Contracting Office, for the demolition of private, commercial and public structures or buildings damaged by Hurricane Katrina and removal of related debris. Ashbritt, Inc., a Florida contractor prevented Necaise Brothers from performing up to \$150 million dollars in clean-up work awarded to it by the Corps, by filing a protest with the General Accountability Office. This was not the first administrative challenge that Ashbritt made in an attempt to block the award of contracts to local Mississippi firms. Prior to the award of Necaise Brothers’ Contract, Ashbritt protested the procurement claiming that the Stafford Act did not allow the Corps of Engineers to include a set aside for local contractors. The GAO validated the Corps’ approach and rejected Ashbritt’s challenge. Ashbritt’s procedural challenge delayed Necaise Brothers’ performance of its Contract by four months. All the while, Ashbritt was performing the work intended for Necaise Brothers.

In addition to the GAO, Congress, with broad bi-partisan support, has recently encouraged the Corps’ attempts to implement the Stafford Act as it applies to Hurricane Katrina Clean-Up contracts in HR 4979 “The Local Community Recovery Act of 2006”.

The bill provides explicit direction to Federal agencies that geographic preferences for the award of contracts are specifically encouraged. Further, the bill states, "It is the sense of Congress that the Corps of Engineers should promptly implement the decision of the Government Accountability Office in solicitation W912EE-06-R-0005, dated March 20, 2006" (this was a reference to the GAO's decision rejecting AshBritt's first bid protest).

The following Congressional Record clearly reflects Congress' intent to remove further interference by Ashbritt in the procurement process. In remarks, Congressman Oberstar states:

Last week, the GAO issued its ruling, its decision in the matter of Ash Britt, Inc., with reference to the file number, dated March 20, and in the most important part said: "We think AshBritt misses the point when it argues that some form of preference short of a set-aside also implements the Stafford Act's preference for using local businesses to clean up disaster-related debris. The question here is not whether some lesser form of preference might have satisfied the act's intent, but whether the preference chosen was an abuse of agency discretion. Since the language in the statute does not specifically restrict the application of the preference, and since the use of a set-aside is consistent with the statutory goal of assisting firms in the affected area, we do not view the Corps' decision to implement the Stafford Act preference with a set-aside as an abuse of the agency's discretion to implement this statutory scheme."

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That settles it. The Corps has the authority; that authority has been affirmed by the Government Accountability Office, and the contracting should proceed. The GAO decision, so clear, so precise, so unequivocal in my judgment and in previous experience with the Corps and with GAO, should ward off any lawsuit or further appeal by Ash Britt. I think they will be very wise to accept the judgment of GAO and allow the procedure to go forward.

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I think it is a good legislative outcome. It is a good direction to the Corps. It will be good for people of Mississippi. It will be a good lesson for workers and smaller contractors in other hurricane-affected Gulf States. It will set a good precedent for the future.

On April 10, 2006, Ashbritt filed yet another protest. This time it was to protest the award of the Contract to Necaise Brothers. Despite the prior ruling by the GAO and the clear Congressional mandate, the Army Corps of Engineers refused to lift the automatic stay which would have allowed Necaise Brothers to begin its work. If Ashbritt's second GAO protest was allowed, all remaining work intended to be completed by Necaise Brothers would now be finished by Ashbritt. Every passing day allowed more work to be completed by Ashbritt, and more work to be taken out of the hands of local contractors.

Having no other alternative, on April 20, 2006, Necaise Brothers filed an Application for Preliminary Injunction requesting that a Federal Judge intervene to stop the Corps from allowing Ashbritt to complete the work rightfully awarded to Necaise Brothers.

Immediately after the filing of the application for preliminary injunction, on April 20, 2006, the Corps of Engineers terminated Necaise Brothers' contract citing delay caused by the protests, thus allowing Ashbritt to continue with the debris removal process. Not only was this a slap in the face to Necaise Brothers and local contractors, it prolongs an unnecessary burden to tax payers. If past recovery efforts were examined- they would show that hiring local workers reduces the cost of debris removal by approximately 25%, puts money back into the devastated local economies and boosts moral of local citizens allowed to take charge in their own recovery process.

Meanwhile, back in Gulfport, MS- our office continues to be inundated with calls from local workers and contractors pleading for an opportunity to clean up and rebuild their community. Unfortunately, at this time we have to redirect their calls.